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No. 302

In the Supreme Court of the United States

OCTOBER TERM, 1952

CLAIBORNE DAMERON, PETITIONER,

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO.

It is to be observed that giving to servicemen the same protection respecting personal property taxes as is given in the case of income taxes in no wise operates as an *exemption* from taxation—the protection hitherto afforded servicemen in respect to income taxes having the purpose of preventing their being subject to income taxes in more than one state of the Union during the same period of time. We believe it is significant that neither in the act itself, nor in the reports of the Congressional committees leading up to the enactment of the amendment, is there any reference to granting exemption from taxation.

The Treasurer of the City and County of Denver does not claim that plaintiff, by virtue of his sojourn in Colorado under military orders, has lost his domicile in Louisiana. There has been no claim that he should pay a Colorado income tax for which residents of Colorado are liable. He is, in accordance with the federal statute, still deemed to be a resident of Louisiana. As to his *intangible* personal property, there is no contention that its situs should be deemed to be other than that in the State of Louisiana. But in respect to the personal tangible property of plaintiff, which has had a physical situs in Colorado during the whole of the taxable period as a result of which it appears it had no physical situs in Louisiana and was not subject to taxation in that state, we are of the opinion that the presumption accorded by the federal statute, that the situs was the State of Louisiana, has been effectively rebutted by the record; and there being no evidence to show that the domiciliary State of Louisiana has taxed the property, Colorado, as the state of actual physical situs, is free to levy and collect the tax for the period in question. It is obvious that, Louisiana having collected no tax on the property, Colorado is the only other state that can tax it. To deny Colorado this right turns the federal statute into an exemption.

24 The basic fact in the instant case is that multiple taxation has not been shown to exist; that the only state in which taxation has occurred for the calendar year 1948 on the property in question is the State of Colorado. There is nothing in the record to show that the taxing officials of the domiciliary State of Louisiana, or any other state of the Union, have undertaken to levy taxes or have in fact collected taxes on the personal tangible property involved in this case. The effect of the argument of counsel for Dameron is to reach a result whereby he would wholly escape taxation on his personal tangible property. We are confident that that was not the purpose of the statute.

Our use of the word "deemed" in the statute, as being the equivalent of "presumed," is not without support. In *Zimmerman* v. *Zimmerman*, 175 Ore. 585, 155 P. (2d) 293, the Oregon

Supreme Court applied such a meaning to the word "deemed," and then continued as follows:

"We think it clear from the authorities above cited that the various constitutional provisions which state that no soldier shall be *deemed* to have acquired a residence in the state *in consequence of* or *by reason of* having been stationed within the same should be construed as if the word 'merely' were inserted immediately before words 'in consequence of' and that such constitutional provisions do not prevent the acquisition of domicil by a soldier under the rules of the common law as set forth in the Restatement of Conflict of Laws."

25 In the instant case it will be noted that there is no need of supplying a modifying adverb, such as the word "merely," used in the Oregon case, to bring out the true meaning. It already is present in the phrase, "solely by reason of being absent therefrom [his domicile]."

Thus the Oregon court held that there was a rebuttable presumption that the sojourning soldier did not acquire a residence; but that the contrary could be shown from facts other than his mere presence in Oregon under military orders.

So in the instant case we interpret the statute, as applied to the presented facts, as though it reads as follows:

"For the purposes of taxation in respect of any person [Dameron], or of his personal property [household goods] * * * by any State, Territory * * * [City and County of Denver] such person [Dameron] shall not be deemed to have lost a residence or domicile in any State, * * * [Louisiana] solely by reason of being absent therefrom in compliance with military * * * orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State * * * [Colorado], while, and solely by reason of being so absent. For the purposes of taxation in respect of the personal property, * * * of any such person [Dameron] by any state, * * * [Colorado] of which such person is not a resident or in which he is not domiciled, * * *" his "personal property shall not be deemed to be located or present in or to have a situs for taxation in such state * * * [Colorado]" solely by reason
26 of his being absent from Louisiana and stationed in Colorado in compliance with military orders."

We have repeated the phrase, "solely by reason of his being absent from Louisiana and stationed in Colorado in compliance with

military orders," because that is the sort of person the statute is describing when it refers, in the last sentence, to 'the personal property of any *such* person.

A serviceman's personal tangible property is not deemed to be located in Colorado *solely* by reason of its Colorado situs and of his being absent from his Louisiana domicile. There must be some additional factor if that presumption is to be upset. That something else, in the instant case, is the complete failure to show that the property has been taxed in the state of domicile. We believe the second paragraph of the amendment indicates the legislative intent that taxes in the state of domicile shall have been paid before the inferences of situs of personal tangible property can be brought into play. Thus sub-section B, having indicated that the term "taxation" shall include the additional items of licenses, fees or excises imposed in respect to motor vehicles or the use thereof, immediately makes it clear that those items must be paid before they can be included within that term.

Because of our views as to the scope and limitations of the Soldiers' and Sailors' Civil Relief Act as applied to the facts in this case, and also because of our views that the application of the act in the instant case does not conflict with the taxing statute of the City and County of Denver and the State of
27 Colorado, it is not necessary that we consider the second question raised by counsel for the Treasurer of the City and County of Denver, namely: That the provision of the Soldiers' and Sailors' Civil Relief Act, here under discussion, is unconstitutional.

The judgment accordingly is reversed.

(File Endorsement Omitted)

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28 IN THE SUPREME COURT OF COLORADO

Judgment—May 12, 1952

This cause having been brought to this Court by writ of error to review the judgment of the District Court of the City and County of Denver, and having been heretofore argued by counsel and submitted to the consideration and judgment of the Court upon the matters assigned as constituting error in the proceedings and judgment of said District Court.

It is therefore ordered and adjudged that the judgment of said District Court be, and the same is hereby, reversed, annulled and altogether held for naught; and that this cause be remanded to said District Court for further proceedings in harmony with the opinion of the Court on file.

It is further ordered and adjudged that said plaintiff in error do have and recover of and from said defendant in error its costs in this Court expended, to be taxed.

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29 IN SUPREME COURT OF COLORADO

Petition for Rehearing Filed May 26, 1952

Comes now the above-named defendant in error by his counsel, and respectfully petitions this Honorable Court for a rehearing of this cause, and in this respect submits:

1. That this Honorable Court misapprehended the meaning of that portion of Section 574 of the Soldiers' and Sailors' Civil Relief Act providing: "* * * and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State * * *," that such provision relates to one in military service under orders who "* * * is not a resident or in which he is not domiciled * * *."

2. That the agreed facts concede that the defendant in error was neither a resident nor legal domiciliary of Colorado (p. 14 r.).

3. That the statute creates the fiction of non-existence of personal property for purposes of taxation, and thus becomes an exemption statute.

4. That exemption statutes are entirely legal. (See *Carson* v. *Roane-Anderson Co.*, Vol. 96, No. 6 Law Ed. Advance Opinions of U. S. Supreme Ct., p. 198—issue of January 28, 1952).

5. That the statute in question, as finally passed, was and is much broader than the stated purpose of the Congressional Committee reports.

6. This Honorable Court misconceived the meaning of the second paragraph of said act by interpreting it to mean that taxes must have been paid on the personal property in question, in some other state, before the statute affords protection; said second
30 section relates only to motor vehicles.

7. This Honorable Court as in error in holding that the contention made on defendant in error's behalf (pp. 8-9 opinion) would allow any serviceman to obtain exemption of his physical tangible property by simply removing it beyond the boundaries of his domicile. The property would have to be with the serviceman at the place where he was serving under orders.

8. This Honorable Court is correct in stating that the word "exemption" does not appear in the act, but fails to accord equiv-

alent meaning to the fiction created of non-existence in the taxing jurisdiction of the tangible personal property of the serviceman.

The reconsideration of this cause is respectfully requested.

/s/ CHARLES S. VIGIL
Charles S. Vigil
United States Attorney for the District of Colorado

/s/ HENRY E. LUTZ
Henry E. Lutz
Assistant U. S. Attorney for the District of Colorado

HEL/dh

(File Endorsement Omitted)

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31 IN SUPREME COURT OF COLORADO

Motion for Stay—Filed May 26, 1952

COMES Now the defendant in error above named by his counsel, and respectfully moves the Court that its mandate or remittitur to the District Court of the City and County of Denver be withheld and stayed until such time as the Supreme Court of the shall have finally passed on this case, and in this behalf represents and shows that it is the purpose and intention of this defendant in error, and within the time therefor allowed by law, and by proper appellate process to take this case to said Supreme Court of the United States; that the matters and things herein involved are publici juris, and affect the right and interests not only of a vast number of persons in the armed services of the United States, but also affect the rights and interests of a large number of state taxing authorities; that it is in the public interest that this case be passed upon by the ultimate authority having jurisdiction thereof.

/s/ CHARLES S. VIGIL
Charles S. Vigil
United States Attorney for the District of Colorado

/s/ HENRY E. LUTZ
Henry E. Lutz
Assistant U. S. Attorney for the District of Colorado

HEL/dh

(File Endorsement Omitted)

32

IN SUPREME COURT OF COLORADO

Order—June 2, 1952

Upon consideration of the motion of the defendant in error for a rehearing in this cause, the Court being well advised in the premises, doth this day order that said motion be, and the same is hereby, denied.

IN SUPREME COURT OF COLORADO

Order—June 5, 1952

Upon consideration of the motion of the defendant in error, it is this day ordered that remittitur herein be withheld and stayed pending appeal of defendant in error to the Supreme Court of the United States.

Clerk's Certificate to foregoing transcript omitted in printing.

U.S. GOVERNMENT PRINTING OFFICE 1952—222232/P.O. 343

In the Supreme Court of the State of Colorado

No. 16613

ROY W. CASS, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER, PLAINTIFF IN ERROR

v.

CLAIBORNE DAMERON, DEFENDANT IN ERROR

Error to the District Court of the City and County of Denver, State of Colorado. Honorable Henry S. Lindsley, Judge.

Order of substitution

October 2, 1952

Come now the Plaintiff in Error by his counsel and the Defendant in Error by his counsel, and jointly move the Court to enter its Order substituting A. S. Brodhead, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver, in the place and in the stead of Roy W. Cass, former Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver.

Upon consideration whereof, it is hereby ordered that A. S. Brodhead, Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver, be, and he hereby is, substituted as Plaintiff in Error in this cause in the place and stead of Roy W. Cass, former Manager of Revenue and Ex-Officio Treasurer of the City and County of Denver.

By the Court:

[SEAL]

WILLIAM S. JACKSON,
Chief Justice.

In Department, October 2, 1952.

A true copy.

Attest:

GEORGE A. TROUT,
Clerk of the Supreme Court of the State of Colorado.

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25

Supreme Court of the United States

No. 302, October Term, 1952

CLAIBORNE DAMERON, PETITIONER

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

Order allowing certiorari

Filed November 24, 1952

The petition herein for a writ of certiorari to the Supreme Court of the State of Colorado is granted. Case transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1952

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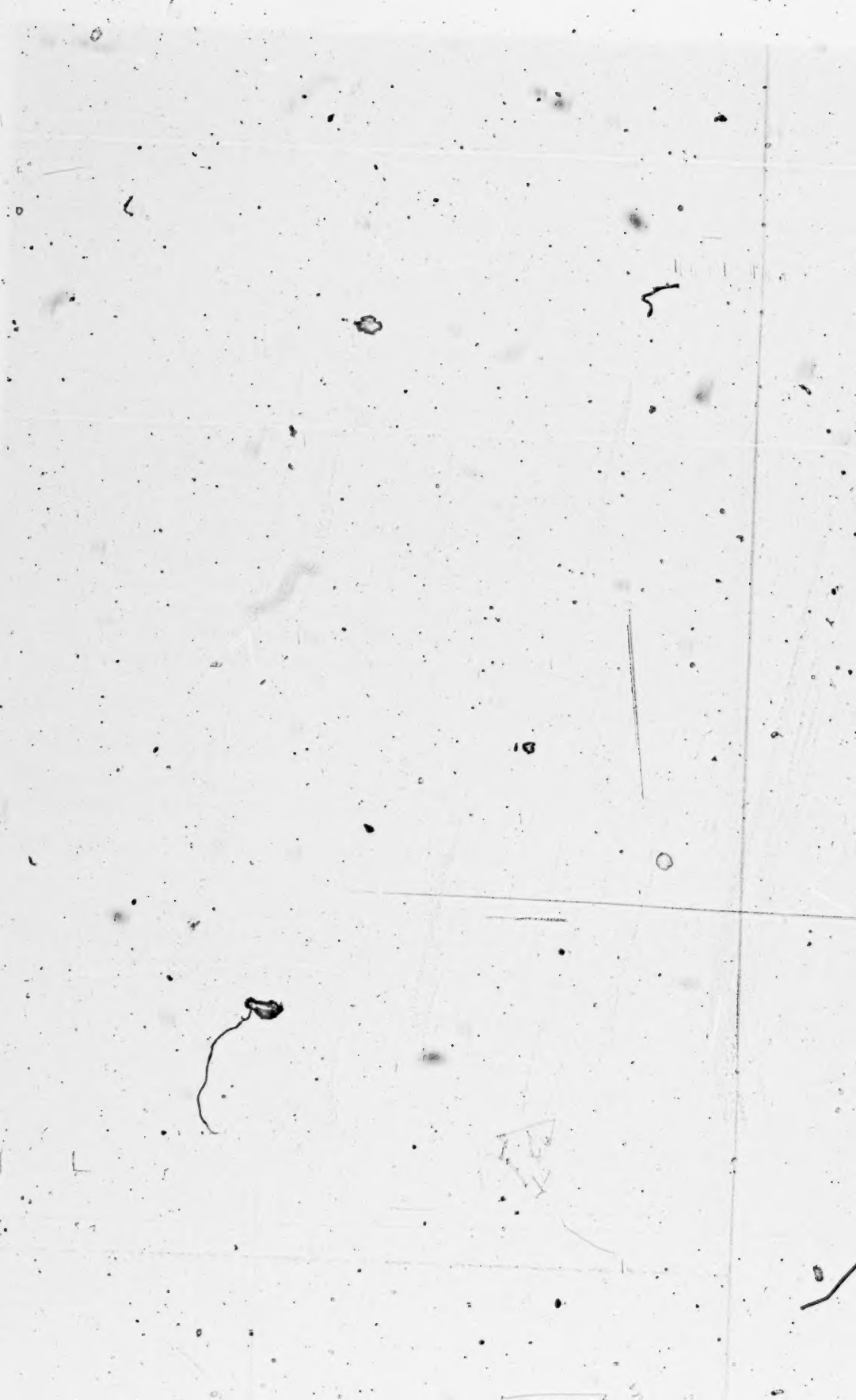

In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 302

CLAIBORNE DAMERON, PETITIONER

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

The Acting Solicitor General, on behalf of Claiborne Dameron, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Colorado entered on May 12, 1952, reversing a decision of the District Court of the City and County of Denver entered on March 18, 1950.

OPINIONS BELOW

The District Court of the City and County of Denver rendered no opinion. The amended opinion of the Supreme Court of Colorado (R. 12) is not

yet officially reported, but is unofficially reported in 244 P. 2d 1082.

JURISDICTION

The judgment of the Supreme Court of Colorado was entered on May 12, 1952. (R. 18.), A petition for rehearing was denied on June 2, 1952 (R. 21), at which time the court promulgated its amended opinion in the case (R. 12). The jurisdiction of this Court is invoked under Section 1257(3), 28 U. S. C.

QUESTION PRESENTED

Whether, under Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended by the Act of July 3, 1944, the tangible personal property of the petitioner, a domiciliary of Louisiana and a member of the armed forces of the United States present in the State of Colorado solely because of his military orders, is subject to taxation by the City and County of Denver in which the personal property is located.

STATUTE INVOLVED

The pertinent portion of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, and excerpts from S. Rept. 959, 78th Cong., 2d Sess., are set forth in the Appendix, *infra*, pp. 12-16.

STATEMENT

The material facts are undisputed. As alleged in the complaint (R. 2-6) and admitted by the answer (R. 6-8), they are as follows:

The petitioner is, and at all times material to this case has been, a commissioned officer of the United States Air Force. The respondent is the duly appointed, qualified and acting Manager of Revenue of the City and County of Denver, State of Colorado, and as such is Ex-officio Treasurer and Assessor. (R. 3.)

During all of the year 1948, the petitioner was a commissioned officer of the United States Air Force assigned to duty at Lowry Field, an installation of the United States Air Force in the State of Colorado, in part within and in part adjacent to the City and County of Denver. In compliance with military orders, the petitioner temporarily was obliged to be and remain in the City and County of Denver, and during all times pertinent to this case he resided in rented quarters at Apartment One, 1523 Willow Street, which are privately owned premises located in the City and County of Denver. (R. 3.)

The petitioner, during the whole of the calendar year 1948 and for many prior years was, and at the present time is, a citizen and resident of the State of Louisiana domiciled in the town of Port Allen in the parish of West Baton Rouge. During all of such time, the petitioner has been a qualified voter in Louisiana (R. 3.)

On April 23, 1948, the respondent, as Manager of Revenue and Ex-officio Treasurer of the City and County of Denver, assessed a tax of $23.51 for the year 1948 upon tangible personal property owned exclusively by the petitioner and possessed

and maintained by him in the City and County of Denver at Apartment One, 1523 Willow Street. (R. 3.)

On April 1, 1949, petitioner, upon the demand of the respondent and solely for the purpose of avoiding the imposition upon himself and his property of penalties and interest, and the seizure, impounding and sale of his tangible personal property, paid to the respondent as Ex-officio Treasurer of the City and County of Denver under protest $23.51 claimed by the respondent to be due and payable as taxes on such tangible personal property. (R. 4.)

Petitioner instituted this action to recover the tax. (R. 4-5.) On March 18, 1950, the District Court of the City and County of Denver entered its judgment in favor of the petitioner and against the respondent. (R. 8.) The Supreme Court of Colorado reversed. (R. 18.)

REASONS FOR GRANTING THE WRIT

The Supreme Court of Colorado has held that states and their political subdivisions in which a member of the armed forces temporarily resides pursuant to military orders may tax his tangible personal property unless he has paid a tax on such property to the state of his domicile. The decision is clearly erroneous in that it fails to give effect to the express terms of Section 514 of the Soldiers' and Sailors' Civil Relief Act, as amended. If it is allowed to stand, it will expose members of the armed forces to the multiple taxation of personal

property which Congress specifically intended to avert.

1. In pertinent part, Section 514 of the Soldiers' and Sailors' Civil Relief Act (Appendix, *infra*, pp. 13-14) provides:

> Sec. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and *personal property shall not be deemed to be located or*

*present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district * * *.* [Emphasis supplied.]

In short, Section 514 provides, in clear and unambiguous language, that when one in the military service is absent from his state of domicile in compliance with military orders, no state other than the state of domicile shall impose a tax upon his personal property or income. The italicized clause, providing that "personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district" in which the serviceman and his property are present pursuant to his military orders, would seem to be dispositive of this case.

However, the Supreme Court of Colorado, looking to the stated Congressional purpose "that * * * military personnel * * * should not be subjected to multiple taxation of personal property" (S. Rept. 959, 78th Cong., 2d Sess. (Appendix, *infra*, p. 16)), and construing "deemed" to mean "presumed," held that Section 514 created only a conditional exemption from personal property taxes, the condition being proof that the state of the serviceman's domicile has levied and collected a tax on his personal property. The Colorado court assumed that the purpose of the statute was satisfied if the state in which a serviceman is temporarily present in compliance with orders does not

impose a tax on personal property which is already being taxed by the state of his domicile.

No such condition appears in the statute. Moreover, when Congress desired to condition a serviceman's exemption from taxation by a state to which he goes in compliance with orders upon payment of a tax to the state of his residence or domicile, it did so expressly in this same statute. Thus, paragraph (2) of Section 514 specifically provides that the serviceman's exemption from payment of local "licenses, fees, or excise imposed in respect to motor vehicles or the use thereof" is conditioned upon his payment of the license, fee, or excise required by the state of which he is a resident or in which he is domiciled. Contrary to the view of the Colorado court, the condition in paragraph (2) of Section 514 is not a general policy to be applied to the entire section, but emphasizes, instead, that Congress did not intend to so limit the exemption from taxation which is conferred in paragraph (1) of Section 514 involved here. Moreover, it is quite obvious that the condition in paragraph (2) was not inserted for revenue purposes, but rather to insure that servicemen's automobiles would be licensed somewhere for general law enforcement purposes.

Moreover, the decision of the Colorado court disregards the methods adopted by Congress to eliminate multiple taxation of the personal property of members of the armed forces. Congress sought to do this by providing that only the state

of the serviceman's permanent residence or domicile could tax his personal property.

The Senate Committee on Military Affairs, in reporting the 1944 amendment to the Act which added the specific exemption for personal property taxes stated (App. p. 16):

> * * * The result has been that servicemen find themselves at times subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.[1]

The problem arises largely from the fact that personal property is assessed for taxation on different dates by the various states and local governments, with the result that a serviceman transferred from state to state could be taxed by each state in which he held his personal property on the assessment date. Congress sought to prevent this by providing that only the state of the serviceman's permanent residence or domicile can tax his personal property. In the instant case, for example, the decision of the Supreme Court of Colorado would prevent Colorado from taxing the petitioner if he is being taxed by Louisiana, his state of domicile; but if petitioner is taxed by Colorado and is then transferred to another state, the latter could tax him again since Colorado was not his state of domicile. Similarly, servicemen domiciled in states such as New York which have no personal property tax could be taxed by each state in which

[1] S. Rept. 959, 78th Cong., 2d Sess.

they and their property happened to be on the assessment day. Thus, the decision below exposes members of the armed forces to the very type of multiple taxation referred to in the Committee Report. Only an application of Section 514 in accordance with its express terms can effectuate its purpose.

2. This Court's decisions make it abundantly clear that exemptions from taxation expressly established by Congress for federal agencies and instrumentalities will not be whittled away by the courts.[2] It is equally clear that when Congress has provided such an exemption it will be interpreted by this Court in keeping with the broad purpose of protecting that which Congress sought to immunize from state taxation.[3] The Colorado court either felt that those principles were inapplicable, or disregarded them when, in effect, it amended the statute in order to place a restrictive and narrow interpretation upon it.

This Court has declared that the Soldiers' and Sailors' Civil Relief Act is to be read with friendly eyes (*Le Maistre* v. *Leffers*, 333 U. S. 1, 6), and that it "is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation" (*Boone* v. *Lightner*, 319 U. S. 561, 575). The rea-

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[2] *Pittman* v. *Home Owners Corp.*, 308 U. S. 21; *Federal Land Bank* v. *Bismarck Co.*, 314 U. S. 95; *Maricopa County* v. *Valley Bank*, 318 U. S. 357, 361; *Carson* v. *Roane-Anderson Co.*, 342 U. S. 232.

[3] *Pittman* v. *Home Owners Corp.*, *supra*; *Federal Land Bank* v. *Bismarck Co.*, *supra*; *Carson* v. *Roane-Anderson Co.*, *supra*.

soning of the Colorado court and the strained construction of the statute reached by that court seem not in harmony with either the broad purposes of the statute, the terms of the section, or the applicable principles of statutory construction.

Having construed the section as it did, the Colorado court stated that it would not consider the question of the constitutionality of the section.[4] It seems beyond question that Section 514 is valid. *Carson* v. *Roane-Anderson Co.*, 342 U. S. at 233-234.

3. The decision below is the first to construe Section 514. While the amounts involved in such personal property taxes are rarely large, the decision below stands as an invitation to other taxing authorities to impose similar taxes upon hundreds of thousands of members of the armed forces who are serving elsewhere than in their states of residence or domicile and who, under the decision, are without protection from multiple taxation. The instant case alone will determine whether such taxes may be assessed upon more than 2,000 servicemen who are temporarily stationed in the City and County of Denver pursuant to military orders, as well as upon a considerable number of servicemen stationed at other points in Colorado.

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[4] We think that the decision inferentially, at least, upholds the constitutionality of the provision in so far as it is given limited application to a serviceman who has paid taxes in his state of domicile, but whose personal property would, under the law of the military duty state, be regarded as taxable by that state.

CONCLUSION

The question is an important one and the decision below seems clearly in conflict with the federal statute. Accordingly, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted.

ROBERT L. STERN,
Acting Solicitor General.

AUGUST 1952.

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

Sec. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of *persons in the military service of the United States* in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

(50 U.S.C. App., 1946 ed., Sec. 510.)

Sec. 101. (1) The term "persons in military service" and the term "persons in the military service of the United States", as used in this Act, shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act, shall signify Federal service on active duty with any branch of serv-

ice heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

* * * * *

(50 U.S.C. App., 1946 ed., Sec. 511.)

Act of July 3, 1944, c. 397, 58 Stat. 722:

* * * That section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179), as added by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (56 Stat. 769), is amended to read as follows:

"Sec. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession,

or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State, Territory,

possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

(50 U.S.C. App., 1946 ed., Sec. 574.)

Sec. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excise imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

(50 U.S.C. App., 1946 ed., Sec. 574 note.)

S. Rep. No. 959, 78th Cong., 2d Sess., pp. 1-2:

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property ac-

tually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

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